IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 121 OF 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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NITIN ISHWARLAL GANDHI & ANR. - Appellant(s)
Versus
GUJARAT NARMADA VALLY FERTILIZERS CO.LTD. - Respondent(s)

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Appearance :

MS. KARUNA RAHEVER for MR. K.G. SHETH for Appellant(s) : 1 - 2.
MR. H.V. CHHATRAPATI for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/11/2006

ORAL JUDGMENT

The parties are heard.

2. The present Second Appeal has been admitted for hearing on 7th December, 1990, but, the substantial

questions of law have not been framed at the time of admission of the appeal. However, to do complete justice with the appellants, I will decide both the questions, which have been framed by the appellants as substantial question of law. They read as under:

> *(1) Whether in the facts and circumstances of the case, the lower Courts have substantially erred in law in decreeing the suit of the respondent-plaintiff on the basis of the alleged agreement dated 31st October, 1981- Exh.46?*
>
> *(2) Whether in the facts and circumstances of the case, the lower Courts have erred in awarding 10% running interest per annum from the date of the suit to the respondent-plaintiff?*

3. The short facts of the case are that the respondent-plaintiff filed the suit submitting, *inter alia,* that the appellants-defendants entered into a service contract on 31st October, 1981 with the plaintiff, the service contract was to remain effective for a period of three years, however, the appellants without any rhyme or reason, without any case or cause, left the services with effect from 1st September, 1982, therefore, they would be entitled to refund of the amount of stipend and

other charges paid by the Company amounting to Rs.8,734.56, training costs amounting to Rs.2,620/-, interest at the rate of 10% from the date of receipt of the stipend and a sum of Rs.500/- as fifteen days' notice amount.

3.1 The defendants appeared before the trial Court and submitted their defence raising various pleas, including the defence that defendant No.1 was compelled to leave the job and circumstances were created which did not allow him to continue the training and the services.

3.2 After recording the evidence and hearing the parties, the learned trial Court decreed the suit and as the appeal had proved futile, the appellants-defendants are before this Court.

4. It would be necessary to note that appellant No.1 - Nitin Ishwarlal Gandhi is the party, who entered into the service contract, while appellant No.2, Ishwarlal Shanabhai Gandhi, is the surety.

5. The learned Counsel for the appellants, after taking me through the entire evidence, submitted that the learned Courts below were absolutely unjustified in

decreeing the suit, less realising that the respondent had created circumstances, which compelled appellant No.1 to leave the job. It is also submitted that the Courts below were not justified in awarding interest at the rate of 10% from the date of payment of the stipend.

6. Contending contrary to this, Mr.Chhatrapati, learned Counsel for the respondent, submits that the two Courts below have considered the facts and have found in favour of the respondent and have negatived the defence that circumstances were created compelling appellant No.1 to leave the job.

7. After going through the records and the training agreement, I must hold that appellant No.1 was not entitled to leave the job/training before completion of three years.

8. It is common knowledge that in a case of service agreement/training agreement where the stipend is paid, an employee on one side gets the training and at the same time, gets money under the head of stipend. If such person continues with the employer, then, the benefits of the training, etc. can always be obtained by the employer, who has trained the person, but, if such

person leaves the training midway, then, the amount of stipend paid and the amount spent on the training would go absolutely waste. In the service world, it is not expected from an employee that after entering into an agreement, he would commit breach of the contract and at the same time, would not compensate the master.

8. After hearing the learned Counsel for the parties, I am of the opinion that the Court below was absolutely justified in decreeing the suit in light of the agreement dated 31st October, 1981. I must also hold that the Court below was justified in awarding simple interest at the rate of 10%. Accordingly, I answer both the substantial questions of law in the negative. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**